

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 586 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

INTJARAHMED SULTANAHMAD

Versus

I.G.(PRISONS)

Appearance:

MR RAJESH M AGRAWAL for Petitioner

MR AG Uraizee, A.P.P. with Mr.M.R.Anand, P.P. for Respondents.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 08/07/96

ORAL JUDGEMENT

Rule. Service of Rule waived by Mr. A.G.Uraizee, learned A.P.P. with Mr.M.R.Anand, learned P.P. on behalf of Respondents.

2. Following reliefs have been prayed for in this petition under Article 226 of the Constitution of India:

"(A) To issue a writ of mandamus or any other appropriate writ, order or direction in the like

nature declaring the action of the respondents authorities in not granting benefit of remission/commutation etc. to the petitioner in commuting 11 years imprisonment under N.D.P.S. Act under the pretext that on account of insertion of Section 32-A of the Act, petitioner is not entitled to said benefit and be further pleased to issue mandatory directions to the respondents to pass necessary orders of release of the petitioner on completion of 11 years imprisonment after adding remissions earned by him and which period of 11 years expired in February 1996 and be further pleased to issue orders to release the petitioner forthwith on expiry of said period of 11 years in February, 1996 and direct the respondents to work out the details in this respect and to release the prisoner-petitioner as soon as his sentenced becomes over, regard being had to the remissions etc. earned by him.

(B) To release the petitioner on bail on such terms and conditions deemed just and proper by this Honourable Court and the petitioner undertakes to abide by the same in the matter of judgment and order dated 22.8.1988 passed by the learned Additional City Sessions Judge, Ahmedabad, in Sessions case No.257/87, pending hearing and final disposal of this Special Criminal Application;"

3. The present petitioner came to be convicted as per the Judgment and order dated 22.8.1988 rendered by the learned Addl. City Sessions Judge, Ahmedabad. His Appeal has been disposed of by this Court as particularised in the petition. The stand of the petitioner is that Section 32-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') is prospective in operation and the petitioner having been convicted and sentenced prior to the said provision having been inserted in the NDPS Act subsequently, the petitioner cannot be denied the benefit of remission and commutations. It is in this connection that the petitioner's learned Advocate has drawn the attention of this Court on a decision rendered by this Court on 24th June 1996 in Special Criminal Application No.609 of 1996. Referring to the decision of this Court (Coram : S.D.Dave, J.) rendered on 24.4.1996 in the case of Dineshbhai Somabhai Patel V/s. I.G.Prisons and another, in Special Criminal Application No.1542 of 1995, this Court gave a declaration that the petitioner there, should not be denied remission and/or commutation in

sentence. The present petitioner also deserves the same treatment.

4. Following order is, therefore, passed :

In the facts and circumstances of the case, therefore, this petition is required to be entertained. It is hereby declared that the petitioner shall not be denied remission and/or commutation in sentence while working out the period of sentence undergone by the prisoner. The respondent shall proceed to consider the petitioner's case for the same on the basis that Section 32-A of the NDPS Act would not be applicable to the petitioner's case and shall take decision in accordance with law as expeditiously as possible, preferrably within a period of three weeks from today. Rest of the prayers are not pressed.

Rule made absolute only in the aforesaid terms.

* * * * *